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RE: Community Reinvestment Act Regulations
RIN 3064-AF22: Notice of Proposed Rulemaking,
Docket ID OCC-2018-0008

To Whom It May Concern:

California Rural Legal Assistance, Inc. (CRLA) writes to address the proposed changes to the Community Reinvestment Act (CRA) regulations. According to FDIC Board member Martin Gruenberg, the FDIC's and OCC's Notice of Proposed Rulemaking (NPRM) on the Community Reinvestment Act (CRA) "is a deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act." At a minimum, the comment period should be extended to 120 days to allow for thoughtful consideration of this complex proposed rule. Ideally, the regulators should pull the proposal and start over.

CRLA works directly with low- and moderate-communities (LMI) and communities of color, who find it difficult to directly communicate or work with their lenders. CRA has afforded us the ability to engage in speaking to top level officials of lending institutions during bank meetings. We speak to them about concerns with their lending practices, and problems for homeowners trying to receive assistance when they have fallen behind on paying their mortgages or are already in foreclosure. Lenders are transferring large numbers of home loans to be serviced by various servicing institutions. The bank meetings give us the opportunity to inform lenders about issues we have seen with the servicers they have contracted. At times, lenders are not even aware of the issues that homeowners face at the hands of the servicers. After bringing awareness to the issues, we have seen servicers change and improve how their assistance to homeowners. This level of communication would not be possible without the CRA giving us this platform. Changes in the CRA rule would weaken assistance to our LMI homeowners and focus less on truly meeting the needs of our local communities.

Less accountability, less public input, less clarity, less investment. CRLA is concerned that the agencies would lessen the public accountability of banks to their communities by enacting unclear performance measures on CRA exams that would not accurately account for banks' responsiveness to local needs. Public input into this obtuse evaluation framework would be more difficult and limited. Despite the agencies' assertions that their proposal would increase clarity and bank CRA activity, the result would be significantly fewer loans, investments and services to low- and moderate-communities (LMI).

Moving away from a core CRA principle, less focus on LMI. The agencies would dramatically lessen CRA's focus on LMI people and communities in contradiction to the intent of the law to address redlining in and disinvestment from LMI and communities of color. The NPRM proposal would expand what counts to allow bank CRA credit for things like financial literacy classes geared towards upper income people. As such, banks will turn away from less lucrative lending to the small businesses and small farms that serve their communities and hire locally. Distressingly, the proposal would now permit projects that only "partially" benefit LMI people and neighborhoods, such as large infrastructure and energy projects. The losers in this will certainly be low income people, entrepreneurs, small businesses and small farms.

Moving away from a core CRA principle, less focus on local communities. The OCC and FDIC propose a new bank level evaluation framework that allows banks to count ALL eligible loans and investments made anywhere, including outside the areas where bank branches are located. CRA implementation has focused on banks serving the local communities where they are operating. As proposed, the rule will likely do nothing to address the critical issue of bank deserts, and only serve to weaken the connection between banks and local communities.

Acknowledging displacement but worsening the problem. The proposed rule purports to address displacement, but only exacerbates it. The definition of affordable housing would be relaxed to include middle-income housing (for people with incomes up to 120% of area median income) in high-cost areas. In addition, the NPRM would count rental housing as affordable housing if LMI people could afford to pay the rent, even if the actual tenants are not low or moderate income. Worse still, banks would get credit for financing athletic stadiums, storage facilities, and luxury housing in Opportunity Zones, which will only fuel gentrification in the very communities vulnerable to it. This will hurt CRLA's client communities.

Weakening CRA's emphasis on branches and deposit products. CRA has rightly maintained a focus on whether banks have a branch presence in LMI communities, and whether banks make their products accessible to all consumers. But this proposal provides almost no incentive for banks to maintain and open LMI branches, and it seems to do away entirely with any consideration of whether banks are offering affordable bank account and other consumer products, such as payday alternative small dollar loans and age friendly account products, which are needed by LMI and senior communities. The result of this proposal will be fewer bank branches in LMI and rural communities, and LMI consumers turning more to predatory check cashers and payday lenders. This too will hurt CRLA's client communities.

Failing to downgrade banks for harm. Sadly, redlining and discrimination are still with us. But this proposal does nothing to address this fact and may very well lead to more redlining as banks fail to serve some of their assessment areas. CRA rules should provide greater scrutiny of, and punishment for, evidence of discrimination, and provide CRA rating downgrades for other forms of harm to the community, such as the financing of displacement. Under this proposal, if regulators are to consider giving banks positive credit for the activities of their affiliated companies, they must scrutinize the affiliated companies for evidence of discrimination, displacement and harm, and downgrade CRA ratings accordingly.

Reducing community input. This proposal appears designed to weaken community input and participation, evidenced by the mere 60 days for public comment. Statements and actions by OCC officials also suggest that the OCC does not like to hear from people with whom it disagrees. This does not optimize the public rule making process. The reaction against community input is evident in the proposal itself, which includes unjustified arbitrary thresholds, references data not shared, creates a formula driven process that reduces the relevance of community input and partnerships, treats performance context as an afterthought, and is not clear on what role, if any, community input on bank performance will play.

Inviting regulatory arbitrage. In pressing ahead without fair consideration of prior input, and without providing enough time for public comment now, the OCC and the FDIC are creating a two (or three) tiered system of oversight. Banks will be able to choose their regulator based on which provides a friendlier CRA framework. Even under the proposal, small banks under $500 million in assets can opt out of the new rules and yet lower their current reinvestment obligations. All banks, especially large banks, should have the same, strong, reinvestment obligations. When regulators choose different rules, and banks can choose their regulators, communities lose.

In closing, CRLA points to the need for greater community input, not less. The CRA requires that the starting point for reinvestment decisions should be community needs, not a list from a federal banking regulator or the desires of big banks. Performance context, transparency of data regarding bank performance to enable better community input, public hearings during mergers, and the development of Community Benefits Agreements should all be encouraged and bolstered. This proposal would result in LESS lending and investment in the very communities that were the focus of CRA when passed by Congress in 1977. This proposal will make things easier for banks, all the while retreating from key statutory and regulatory core principles of CRA, such as a focus on LMI communities, a focus on banks meeting local community credit needs, and active community participation to ensure that the communities, not big banks, benefit. Ideally, CRA reform can proceed in a more thoughtful way to benefit the communities it was designed to build up and strengthen our society as a whole.

Thank you for your serious consideration of our views.

California Rural Legal Assistance, Inc.

cc: California Reinvestment Coalition
National Community Reinvestment Coalition